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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,848	07/28/2003	Victor J. Ortega	25040.0918	5200
29052	7590	03/29/2006	EXAMINER	
SUTHERLAND ASBILL & BRENNAN LLP			BELT, SAMUEL E	
999 PEACHTREE STREET, N.E.			ART UNIT	
ATLANTA, GA 30309			PAPER NUMBER	
			3746	

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/628,848

Applicant(s)

ORTEGA ET AL. E

Examiner

Samuel E. Belt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/15/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 7/11/2003 is acknowledged. Since submission complies with 37 CFR 1.97 and 1.98, the examiner has considered the references listed therein.

### ***Oath/Declaration***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

***Claim Rejections - 35 USC § 112, second paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20, & 23-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicants claimed ranges of “*about* one (1) to *about* six (6) rollers”, “*about* three (3) to *about* four (4) rollers”, and “*about* two (2) to *about* three (3) rollers” is unclear as to the end points of the range being claimed as the number of rollers can only be in integral numbers.

*Clarification and/or correction are required.*

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 10-18, & 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wells et al. (US Patent 6,041,709).

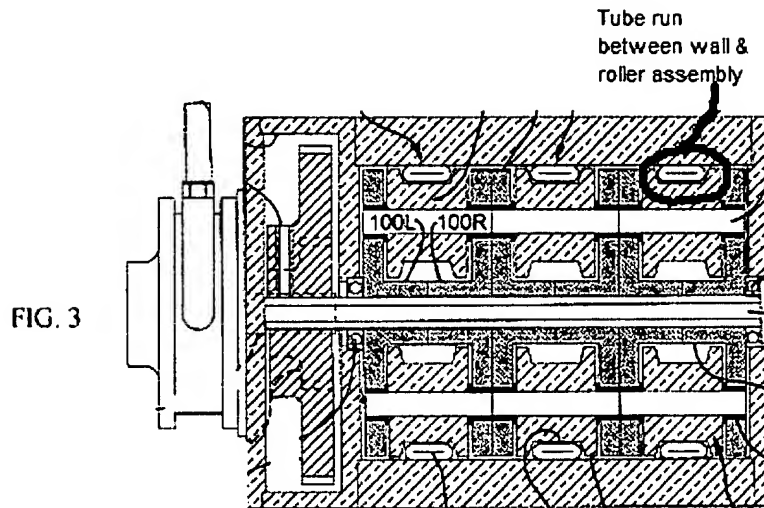
Wells et al. disclose a peristaltic pump for transporting a fluid within a flexible tube having a first end, a middle portion, and a second end, comprising: a roller assembly (Figure 2, item 110) positioned for rotation; a first door (Figure 2, item 82) positioned adjacent to said roller assembly and pivotable about a first direction; and a second door (Figure 2, item 84) positioned adjacent to said roller assembly and pivotable about a second direction; such that said first door and said second door may pivot open and said middle portion of said flexible tube may be positioned about said roller assembly; further comprising a base (Figure 3, items 86, 88, 90) such that said roller assembly may be positioned therein and such that said first door and said second door may be pivotably attached thereto; wherein said base comprises a tube inlet (Figure 2, item 118) and a tube outlet (Not labeled; However, clearly seen in Figure 2) positioned thereon; wherein said base comprises an indent (**See Note 1**) for said roller assembly to be positioned therein; wherein said base comprises a plurality of base hinges (Figure 2, item 92) for pivoting said first door and said second door; wherein said first door comprises a wall, said wall positioned adjacent to said roller assembly so as to define a tube run therein (Not labeled; However, clearly seen in Figure 3, **See Note 2**); wherein

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said second door comprises a tube guide positioned thereon (Figure 2, item 112); further comprising locking means (Figure 2, item 94) positioned thereon for said first door and said second door; wherein said roller assembly comprises a plurality of rollers (Figure 2, item 106); wherein said roller assembly comprises a plurality of discs (Figure 3, items 100L & 100R) so as to mount said plurality of rollers thereon; wherein said plurality of discs comprises a plurality of roller mounting locations (Figure 3, items 108) such that the number of rollers may be modified; wherein said roller assembly comprises a plurality of replaceable rollers (**See Note 3**); further comprising a pump motor (Figure 3, items 128) in communication with said roller assembly; wherein said pump motor comprises a variable speed motor (column 8, line 49+); wherein said base, said first door, and/or said second door comprise acetal resin (column 7, line 43+)

**(Notes:**

- 1.) The bearings (Figure 3, item 96) of the roller assembly are received into base parts 88 & 90 via an indentation.
- 2.) Refer to the figure below.



3.) In regard to claim 14 the Wells et al. device has rollers which are "replaceable".

#### End Notes)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 19, & 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wells et al. (US Patent 6,041,709) in view of Yakich (US Patent 4,549,860).

In regard to claim 9 Wells et al. disclose the aspects of the claimed apparatus as explained above, but fail to teach an indent in the second door.

Yakich teaches a peristaltic pump having an indent formed into a door (Figure 4). The configuration of having an indentation or track in a door allows for better support of the roller assembly while it is running. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wells et al. device by using the indentation in the door as taught by Yakich in order to reduce any excessive movement in the rotating assembly thereby decreasing the amount of wear on the parts.

In regards to the claimed ranges of pump motor speed, Wells et al. disclose the aspects of the claimed apparatus as explained above, but fail to teach a variable motor speed between the range of 5 to about 120 rpm and narrower ranges in between.

Yakich teaches a peristaltic pump having a variable speed AC motor that can be varied up to 200 rpm (column 5, line 20+). The configuration of having a variable speed motor allows for better control of the pump flow. The narrower ranges above are regarded as an obvious matter of finding the workable ranges in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wells et al. device by using the variable speed motor as taught by Yakich in order to deliver the pumping fluid at different rates thereby running the motor in a more efficient manner and/or as an obvious matter of finding the workable ranges in the art.



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Claims 23 & 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wells et al. (US Patent 6,041,709) in view of Yakich (US Patent 4,549,860) as applied above and further in view of Lowe et al. (US Patent 6,419,466).

Wells et al. and Yakich disclose the aspects of the claimed apparatus as explained above with the claimed number of rollers shown in Figures 1 and 2, but fail to teach the method of using coffee or orange juice as a predetermined type of fluid.

Lowe et al. teach a peristaltic pump which can dispense both coffee or orange juice fluids (column 3, lines 16+). The claimed fluids of coffee and orange juice are well known fluids that can be dispensed from a peristaltic type pump as evidenced by Lowe et al. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wells et al. and Yakich device by using the method as taught by Lowe et al. of dispensing coffee or orange juice.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel E. Belt whose telephone number is (571) 272-7820. The examiner can normally be reached on M-F, 8 - 4:30EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on (571) 272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB

  
Samuel E. Belt  
03/11/2006

  
**TAE JUN KIM**  
**PRIMARY EXAMINER**